

TAM:MJB:all

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JUKEN WASHINGTON GORDON,	:	CIVIL ACTION NO. 1:CV-01-0331
Plaintiff,	:	
	:	
v.	:	(Rambo, J.)
	:	
N. GONZALEZ, <u>et al.</u> ,	:	
Defendants.	:	Filed Electronically

**DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION IN LIMINE  
TO EXCLUDE EVIDENCE OF "SURVEILLANCE" VIDEOTAPE**

Defendants N. Gonzalez, S. Puckey, B. Shuman, J.A. Candelora, and G. Shuck, respectfully submit this reply brief in support of their motion to exclude evidence of a non-existent "surveillance" videotape. In Plaintiff Juken Washington Gordon's response to the motion in limine to exclude evidence of the non-existent "surveillance" videotape, Gordon asserts that Defendants did not submit affidavits of Lori Cunningham, Esquire or Anne K. Fiorenza, Esquire to support the motion. Because Gordon will not rely on the representation of counsel in letters or by the instant motion, attached as exhibits are two declarations sworn and signed by Ms. Cunningham and Ms. Fiorenza. See Exs. A-B.

As the declarations provide, at the outset of this litigation, only one videotape existed regarding this incident. See id. That videotape has been provided to Gordon. No other videotape exists. Gordon has produced no evidence that any videotape was in the possession of Defendants or their counsel and was not provided to Gordon. Rather, Gordon admits that he received a letter on or about December 29, 2000 from BOP Northeast Regional Counsel Henry J. Sadowski stating that any videotape taken outside the dining room at issue in this case no longer exists. This letter belies Gordon's assertions that he believed a videotape still existed.

Whether or not Gordon incorrectly believed that another "surveillance" videotape existed has no tendency to make the existence of his alleged assault more probable or less probable than it would be without evidence of the non-existent tape. See Fed. R. Evid. 401.

Any mention of this non-existent videotape would prejudice Defendants because it subjects their current Agency counsel and former trial counsel to testify to a tape that does not exist. The non-existent videotape would also confuse, mislead, and waste the time of the jury when they should be focused on the events that occurred inside the Lieutenant's office. See Fed. R. Evid. 403.

For the reasons noted above and in the Defendant's Brief in Support of Motion In Limine to Exclude Evidence of "Surveillance" Videotape, this Court should exclude from trial any evidence of a

non-existent "surveillance" video outside the mess hall on September 9, 2000 and order that Gordon may not call as witnesses Lori Cunningham, Esquire or Anne K. Fiorenza, Esquire.

Respectfully submitted,

THOMAS A. MARINO  
United States Attorney

Dated: September 30, 2004

/s Michael J. Butler  
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CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers. That on September 30, 2004, she served the attached

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by placing said copies in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Harrisburg, Pennsylvania.

Addressee:

Juken Washington Gordon  
Reg No. 0573-088  
USP Allenwood  
P.O. Box 3000  
White Deer, PA 17887

/s Anita L. Lightner

Anita L. Lightner  
Paralegal Specialist